

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of) NOTICE OF PUBLIC HEARING
ARM 24.111.401 and 24.111.402 general) ON PROPOSED AMENDMENT
provisions, 24.111.510 certification for) AND ADOPTION
specialty practice of naturopathic childbirth)
attendance, 24.111.602, 24.111.604 and)
24.111.612 licensing and scope of practice)
for direct-entry midwifery, 24.111.2102 and)
24.111.2103 continuing education, and)
24.111.2301 unprofessional conduct, the)
proposed adoption of NEW RULE I additional)
recommended screening procedures, and)
NEW RULE II nonroutine applications)

TO: All Concerned Persons

1. On January 11, 2007, at 8:30 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Alternative Health Care (board) no later than 5:00 p.m., on January 5, 2007, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdahe@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.111.401 FEES (1) Fees ~~shall be transmitted by check~~ are payable to the Board of Alternative Health Care. ~~The board assumes no responsibility for loss in transit of such remittances. Applicants not submitting the proper fees will be notified by the department.~~ Fees and are nonrefundable.

(2) The fees ~~shall be~~ are as follows:

| | |
|--|---------------------------|
| (a) naturopathic <u>license</u> application | \$300 |
| (b) naturopathic original license | 200 |
| (c) naturopathic <u>license</u> renewal | <u>550</u> 275 |
| (d) naturopathic specialty certificate | 100 |
| (e) naturopathic specialty certificate renewal | 25 |
| (f) midwife <u>license</u> application | <u>300</u> 250 |

| | |
|--|----------------|
| (g) midwife original license | <u>200</u> 50 |
| (h) remains the same. | |
| (i) midwife <u>license</u> renewal | <u>550</u> 275 |
| (j) midwife provisional | 200 |
| (k) (j) midwife apprentice <u>license application</u> | 200 |
| (l) (k) midwife apprentice <u>license</u> renewal | 200 |
| (m) (l) midwife exam proctor only fee | 150 |
| (3) remains the same. | |

AUTH: 37-1-134, 37-26-201, 37-27-105, MCA

IMP: 37-1-134, 37-1-141, 37-26-201, 37-26-403, 37-27-203, 37-27-205, 37-27-210, MCA

REASON: The board determined that it is reasonably necessary to amend this rule to correct syntax, make the rule format internally consistent, accommodate electronic and other forms of payment of fees, delete provisions regarding clerical procedures for processing applications, delete the provisional license fee, and increase certain licensing fees. Implementation cites are being amended to accurately reflect all statutes implemented through this rule.

The midwife provisional license fee is being eliminated as this license type no longer exists. In 1989, the practice of direct-entry midwifery was added to the exemptions from the licensure requirements of 37-3-103, MCA. (Ch. 493, L. 1989). Direct-entry midwives could become authorized to practice in this state by submitting an affidavit to the department. The Direct-Entry Midwifery Licensing Act of 1991 (Ch. 550, L. 1991) provided for the immediate issuance of a provisional license to those who had previously filed the affidavit. The provisional license remained valid until results of the first licensing examination were reported. The purpose of the provisional license was to avoid any interruption in midwives' authorization to practice during the transition to a licensure program. The terms regarding provisional licensure were deleted from 37-27-205, MCA, during the 1999 Montana legislature, thus the need for a provisional license fee no longer exists.

The board has determined that there is reasonable necessity to raise certain license fees to comply with the provisions of 37-1-134, MCA, and keep the board's fees commensurate with program costs. Increased board expenses are attributable to increased recharges for services of department staff and attorneys and increases in rent, gas, utilities, and numerous miscellaneous expenses. The department, in providing administrative services to the board, has determined that unless the fees are increased as proposed, the board will have projected budget shortfalls of \$25,890 by the end of FY 2008, and \$58,494 by the end of FY 2009. The board estimates that approximately 71 naturopaths, 24 midwives, and three new midwife applicants per year will be affected by the fee increases and that the proposed fee increases will generate estimated additional annual revenue of \$26,725.

24.111.402 MANAGEMENT OF INFECTIOUS WASTE (1) Each naturopathic physician, ~~and direct-entry midwife, and direct-entry midwife apprentice~~ licensed by the board shall store, transport off the premises, treat, and dispose of infectious waste, as defined in 75-10-1003, MCA, in accordance with the

requirements of Title 75, chapter 10, part 10, MCA, and rules adopted by the Department of Environmental Quality pursuant thereto set forth in 75-10-1005, MCA.

~~(2) Used sharps are properly packaged and labeled within the meaning of 75-10-1005(1)(a), MCA, when this is done as required by the Occupational Safety and Health Administration (OSHA) regulations contained in 29 CFR 1910.1030 (1993), which are incorporated by reference. Copies of the federal regulations referenced above are available for public inspection in the office of the Board of Alternative Health Care, Federal Building, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513.~~

AUTH: 37-26-201, 37-27-105, 75-10-1006, MCA

IMP: 75-10-1006, MCA

REASON: It is necessary to amend this rule and add apprentice midwives as all of the board's licensees are obligated to comply with Montana's Infectious Waste Management Act (Act) (Title 75, chapter 10, part 10, MCA). It is also necessary to add treatment of infectious waste to the scope of the rule in order to conform to the Act. By deleting the reference to 75-10-1005, MCA, in (1) and substituting a citation to the Act as a whole and the rules adopted pursuant to it, this rule will be consistent with 75-10-1004, MCA. Section (2) is unnecessary because packaging and labeling of sharps is covered under 75-10-1005, MCA. Incorporating federal regulations and keeping copies of those federal materials available for distribution is unnecessary in view of the fact that this rule implements 75-10-1006, MCA.

24.111.510 CERTIFICATION FOR SPECIALTY PRACTICE OF NATUROPATHIC CHILDBIRTH ATTENDANCE (1) A naturopathic physician licensed in Montana, or an applicant for a Montana naturopathic physician license, who wishes to practice natural childbirth must apply to and receive from the board, a certificate of specialty practice in naturopathic childbirth attendance. To receive and maintain a certificate, the applicant must fulfill the following requirements:

~~(a) All applications for certificate of specialty practice shall be made on printed forms prescribed and furnished by the board, and no applications made otherwise will be accepted. Applications shall be subscribed and sworn to before a notary public or other person qualified to administer oaths. Applications shall be accompanied by proper fees and the applicant's current Montana naturopathic physician license number, or documentation of applicant's concurrent application for a Montana naturopathic physician's license.~~ submit an application for the specialty certificate on a form furnished by the board together with the correct fee;

~~(b) Applicants must complete~~ provide an official transcript from an approved naturopathic medical college or hospital or a signed supervisor document showing completion of at least 100 clock hours (where 12 clock hours equal one quarter credit or equivalent semester credit) of academic coursework, internship, or preceptorship in obstetrics at an approved naturopathic medical college or hospital ~~in obstetrics or with an approved licensed physician and furnish a signed log showing evidence that (i) and (ii) below have been completed;~~

(c) provide a signed log of natural childbirths which contains:

(i) each baby's name;

- (ii) date of birth;
- (iii) county and state of birth;
- (iv) name and natural childbirth credentials of supervising physician; and
- (v) name of the primary birth attendant showing that the following experience was obtained under the direct supervision of a licensed naturopathic, medical, or osteopathic physician with specialty training in obstetrics and/or natural childbirth:
 - (i) (A) the applicant has taken part in the care of 50 women in both the prenatal and postnatal periods; and
 - (ii) (B) the applicant has observed and assisted with in the intrapartum care and delivery of in 50 natural childbirths in a hospital or alternative birth setting, including 25 births that document the applicant as the primary birth attendant. Of the 25 births for which the applicant was the primary birth attendant, three of the births must have occurred within the two years immediately preceding the submission of the application and in at least one of those three births, the applicant must have provided continuous care. For purposes of this rule, "continuous care" means at least five prenatal visits occurring on or before the 28th week of gestation, as determined by last menstrual period or sonogram, and one postnatal visit.
- ~~(c) Documentation of 100 clock hours of coursework, internship or preceptorship shall consist of an official transcript from an approved naturopathic medical college or hospital, or a signed supervisor document detailing hours of internship or preceptorship.~~
- ~~(d) A signed log of natural childbirth care in accordance with (i) and (ii) above shall consist of evidence the applicant has observed and assisted in the deliveries of 50 natural childbirths since 1980, including 25 as the primary birth attendant. Evidence shall be in the form of baby's name, date of birth, county and state of birth, and the name(s) of the primary birth attendants.~~
- ~~(e) (d) Applicants must pass provide proof of having passed a specialty examination in obstetrics given by or approved by the board, or the ACNO American College of Naturopathic Obstetrics' (ACNO) obstetrics specialty examination, or the NPLEX Naturopathic Physician Licensing Examination's (NPLEX) obstetrics specialty examination.~~
- ~~(f) Certificates of specialty practice shall expire concurrently with the licensee's naturopathic physician's license, and shall be renewed, as outlined in the general naturopathic physician's license renewal section, upon receipt of the renewal fee set by the board and submission of five hours of board-approved continuing education credits in obstetrics in addition to the 15 continuing education credits required for naturopathic physician renewal.~~

AUTH: 37-26-201, MCA

IMP: 37-26-304, MCA

REASON: The proposed amendments are necessary to clarify the requirements for obtaining a certificate of specialty practice in naturopathic childbirth. The proposed amendment deletes redundant provisions relating to certificate renewal and continuing education requirements already contained in ARM 24.111.2101 and 24.111.2102 and experience requirements duplicated within this rule. The board determined it is necessary for the protection of the public to amend the rule and

require that some of the applicant's natural childbirth experience has been recently obtained and includes a continuous care birth. These requirements ensure that the applicant's childbirth experience is sufficiently comprehensive in scope and not limited to catching babies at birth and also that the applicant's skills are fresh without tying the recentness of the experience to a specific calendar year.

24.111.602 DIRECT-ENTRY MIDWIFE APPRENTICESHIP REQUIREMENTS (1) through (7) remain the same.

(8) Direct-entry midwife apprenticeship applicants who have, at the time of application, through an apprenticeship or other supervisory setting, participated as the primary birth attendant at 25 births, 15 of which included continuous care, may enter directly into direct-entry midwife apprenticeship license Level III-B. The 25 births and 15 continuous care births shall be evidenced by the signed birth certificate as primary birth attendant, an affidavit from the birth mother or documented records from the applicant, as shown on the birth experience form ~~prescribed~~ furnished by the board.

(a) Documentation of 15 continuous care births must show at least five prenatal visits ~~beginning~~ occurring on or before the 28th week of gestation, as determined by last menstrual period or sonogram, and include one postnatal visit. Ten of the 15 continuous care births must have occurred under the ~~personal~~ direct supervision of a qualified supervisor.

(9) To be approved by the board as a supervisor of a direct-entry midwife apprentice, each supervisor shall:

(a) hold a current, unencumbered Montana license ~~be currently licensed in good standing as a direct-entry midwife, a certified nurse midwife, a licensed naturopathic physician who is certified for the specialty practice of naturopathic childbirth attendance, or a physician licensed under Title 37, chapter 3 as defined in 37-3-102, MCA.~~

(i) through (10) remain the same.

AUTH: 37-1-131, 37-27-105, MCA

IMP: 37-27-105, 37-27-201, 37-27-205, 37-27-321, MCA

REASON: It is necessary to amend this rule to clarify licensing processes and accuracy in terminology. The department develops the application forms to be as uniform as possible between and among the licensing boards. Therefore, the board is amending the rule to clarify that the board will furnish the forms rather than prescribe them.

In addition, the word "beginning" in (8)(a) was reportedly confusing to an applicant who sought to have one or more nonqualifying intrapartum visits counted as "prenatal" visits. Substituting "occurring" for "beginning" will make the rule clearer. It is necessary to change the term "personal" supervision to "direct" supervision in (8)(a) because effective 5/13/2005, the board divided personal supervision into two types, direct and indirect supervision, and defined all three terms in ARM 24.111.301. In the context of (8)(a) of this rule, use of the term "personal supervision" is no longer correct. In order to enter into Level III-B, the

experiences of the applicant must have been under the direct supervision of the supervisor, i.e., in the supervisor's physical presence.

The phrase "licensed in good standing" is being amended to "unencumbered license" because that term is more precise and it is used elsewhere in board rules. The amendment is part of the board's effort to be consistent in its use of terminology.

It is reasonably necessary to amend (9)(a) to specify that to receive board approval within a Montana direct-entry midwife apprenticeship program, apprentice supervisors must be licensed in Montana. Montana licensed apprentices sometimes travel to birthing centers in other states to acquire birthing experience and work in a supervisory setting with physicians or midwives in those states because the volume of cases there is greater. However, when a Montana licensed apprentice leaves Montana, the apprentice is not practicing in the other state under the apprentice's Montana license or as part of the Montana apprenticeship program governed by Montana statutes and rules. The board notes that documentation of birthing experiences obtained out-of-state may be submitted to the board for review when seeking board approval to advance from one apprenticeship level to another or with an application for full direct-entry midwife licensure. The board will determine whether any or all of the out-of-state experiences will be approved.

24.111.604 LICENSING BY EXAMINATION (1) through (1)(d) remain the same.

(i) documentation of 15 continuous care births must show at least five prenatal visits ~~beginning~~ occurring on or before the 28th week of gestation, as determined by last menstrual period or sonogram, and include one postnatal visit. Ten of the 15 continuous care births must have occurred under the ~~personal~~ direct supervision of a qualified supervisor.

(2) remains the same.

~~(3) All applicants shall comply with the adult and infant cardiopulmonary resuscitation certification requirements set forth in 37-27-201, MCA, and provide a photocopy of a current CPR card, which must remain valid throughout the license period.~~

(4) remains the same but is renumbered (3).

AUTH: 37-27-105, MCA

IMP: 37-27-201, 37-27-202, 37-27-203, MCA

REASON: The board determined there is reasonable necessity to substitute "occurring" for "beginning" in (1)(d)(i) because it was reportedly confusing to an applicant who sought to have one or more nonqualifying intrapartum visits counted as "prenatal" visits. Substituting "occurring" for "beginning" will make the rule clearer. It is necessary to change the term "personal" supervision to "direct" supervision in (1)(d)(i) because effective 5/13/2005, the board divided personal supervision into two types, direct and indirect supervision, and defined all three terms in ARM 24.111.301. In the context of (1)(d)(i) of this rule, use of the term "personal supervision" is no longer correct. Section (3) of the rule merely repeats requirements in 37-27-201(5) and (6), MCA, as implemented in (1)(d) of this rule, and is being deleted as unnecessary.

24.111.612 VAGINAL BIRTH AFTER CESAREAN (VBAC) DELIVERIES

(1) remains the same.

(a) An informed consent statement, on a form ~~prescribed~~ furnished by the board, shall be signed by all prospective VBAC parents and the licensee, and retained in the licensee's records. The form shall include:

(i) through (2) remain the same.

AUTH: 37-27-105, MCA

IMP: 37-27-105, 37-27-311, MCA

REASON: It is necessary to amend this rule to clarify licensing processes and accuracy in terminology. The department develops the application forms to be as uniform as possible between and among the licensing boards. Therefore, the board is amending the rule to clarify that the board will furnish the forms rather than prescribe them. An implementation cite is being added to accurately reflect all statutes implemented by this rule.

24.111.2102 NATUROPATHIC PHYSICIAN CONTINUING EDUCATION REQUIREMENTS ~~(1) In accordance with 37-26-201(9), MCA, the Montana Board of Alternative Health Care hereby establishes requirements for the continuing education of licensed naturopaths as a condition of license renewal. Training for entry into the field is not considered adequate assurance of continued competence throughout a naturopath's career. Fulfillment of continuing education requirements is viewed as one necessary vehicle for maintaining standards of professional practice and for assuring the public of a high standard of naturopathic services.~~

~~(2) The board/staff will not preapprove continuing education programs or sponsors. Qualifying criteria for continuing education are specified in these rules. It is the responsibility of the licensees to select quality programs that contribute to their knowledge and competence which also meet these qualifications.~~

~~(a) The continuing education program must meet the following criteria:~~

~~(i) The activity must have significant intellectual or practical content. The activity must deal primarily with substantive naturopathic issues as contained in the scope of practice of naturopathy in Montana. In addition, the board may accept continuing education activities from other professional groups or academic disciplines if the licensee demonstrates that the activity is substantially related to his or her role as a naturopath. A continuing education program is defined as a class, institute, lecture, conference, workshop, cassette or videotape.~~

~~(ii) The activity itself must be conducted by an individual or group qualified by practical or academic experience.~~

~~(iii) All acceptable continuing education courses must issue a program or certificate of completion containing the following information: full name and qualifications of the presenter; title of the presentation attended; number of hours and date of each presentation attended; name of sponsor; and description of the presentation format.~~

~~(iv) Preparation for and presentment of a program shall be allowed at the rate of one continuing education credit for each hour of preparation or presentment,~~

limited to one presentation of the program. No more than three credits of continuing education presentations will be allowed.

~~(v) Excluded are programs that promote a company, individual or product (hosted programs are not approved), programs whose subject is practice economics except those programs specifically dealing with workers' compensation or public health, and programs primarily intended to educate the general public, i.e., CPR, first aid, etc.~~

~~(b) Implementation for continuing education shall be as follows:~~

~~(i) One continuing education credit shall be granted for each hour of participation in the continuing education activity excluding breaks and meals. A licensed naturopath must earn at least 15 continuing education credits within the 12 months prior to renewal on the date set by ARM 24.101.413. (Five must be in naturopathic pharmacy, five additional in obstetrics if licensee has childbirth specialty certificate.) A maximum of two credits by cassette or videotape per renewal period is allowed. A certificate of completion or an outline of course content must be submitted by the licensee for each cassette or videotape credit to be allowed. The total number of continuing education credits obtained via the Internet and/or correspondence courses will be limited to three credits per renewal period.~~

~~(ii) No continuing education is required for naturopaths renewing their license for the first time.~~

~~(iii) All licensed naturopaths must either attest to the board, on the renewal form, that they have obtained the required number of continuing education credits or submit a plan to complete CE credits. The board will review the renewal forms within six months of the renewal date of that same year, and notify the licensee regarding his/her noncompliance. Prior to the next consecutive year's license renewal date, those licensees who have not complied with continuing education requirements will not be granted license renewal. Those not receiving notice from the board regarding their continuing education may assume satisfactory compliance. Notices will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education programs used to complete delinquent continuing education plan requirements for licensure may be used to meet the continuing education requirements for the next continuing education reporting period.~~

~~(iv) All licensees holding a certification for specialty practice of naturopathic childbirth attendance must complete an additional five hours of continuing education in obstetrics annually to continue certification, for a total of 20 hours.~~

~~(v) If a licensee is unable to acquire sufficient continuing education credits to meet the requirements, he or she may request a waiver. All requests for waiver will be considered by the Board of Alternative Health Care and evaluated on an individual basis.~~

~~(vi) It is the responsibility of the licensee to establish and maintain detailed records of continuing education compliance (in the form of programs and certificates of attendance) for a period of two years following submission of a continuing education report.~~

~~(vii) The board will randomly audit 20 percent of the licensees and will request documentation for continuing education credits as specified in board rule.~~

~~Any continuing education noncompliance determined by the audit may be handled by the board as a disciplinary matter.~~

(1) Naturopaths must obtain 15 continuing education credits each renewal period except as provided in (9). At least five of the credits must be in naturopathic pharmacy. If the naturopath holds a naturopathic childbirth specialty certification as provided in ARM 24.111.510, an additional five credits per renewal period must be obtained in obstetrics. One hour of education (excluding breaks) equals one continuing education credit.

(2) No more than five continuing education credits per renewal period may be obtained through electronic or other nonlive means of program delivery.

(3) No more than three continuing education credits per renewal period will be approved for preparation of and for a single presentation of a program meeting the requirements of this rule.

(4) Continuing education programs will not be preapproved by the board or staff.

(5) In order to be approved, a continuing education program must:

(a) have significant intellectual or practical content;

(b) relate to substantive naturopathic medicine topics within the scope of practice for naturopaths in Montana, except as otherwise provided herein;

(c) be presented by person(s) qualified by practical experience and academic credentials; and

(d) issue certificates of completion (except nonlive programs) and program agendas/syllabi containing the following information:

(i) title and date(s) of program;

(ii) name(s) and qualification of presenter(s);

(iii) outline of program content;

(iv) credit hours of instruction;

(v) description of presentation delivery (i.e., live or nonlive); and

(vi) identification of sponsoring organization.

(6) Continuing education programs from other professions or academic disciplines are eligible for approval if substantially related to the role of naturopaths.

(7) In accordance with 37-1-131, MCA, compliance with this rule shall be attested to by the naturopath on the renewal application except as provided in (8).

The board will conduct random audits after each renewal period closes of 20 percent of all naturopaths with renewed licenses, for documentary verification of compliance. Documentary evidence of program completion must be maintained by the naturopath for a period of two years for audit purposes.

(8) Prior to the renewal date set by ARM 24.101.413, a naturopath may apply to the board for an extension of time to complete continuing education requirements for the period then concluding. The request must enclose a detailed plan for completion of the requirements. The board may, in its sole discretion and for good cause shown, grant an extension of time of a specific duration. If granted, the naturopath must submit documentary verification of compliance by the extension deadline set by the board.

(9) No continuing education credits are required for a naturopath renewing the naturopath's Montana license for the first time.

(10) Continuing education credit will not be approved for programs:

(a) relating to general business or economic issues other than workers' compensation; or

(b) primarily intended to educate the general public such as CPR and first aid other than programs relating to public health issues.

AUTH: 37-1-131, 37-1-141, 37-1-319, 37-26-201, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, MCA

REASON: It is necessary to amend and reorganize this rule for increased clarity among readers and to delete information that is already contained in statute or other rules or is of an administrative nature that need not be in rule. The majority of the amendments to this rule are grammatical or organizational in nature and do not reflect substantive changes to the former rule.

It is necessary to amend this rule regarding continuing education reporting and licensure renewal to comply with statutory continuing education provisions at 37-1-131, MCA. These amendments clarify that a request for an extension of time to complete the continuing education requirement for good cause will not hold up license renewal, thus conforming to 37-1-131, MCA. However, such request will trigger a postrenewal requirement for submission of documentary verification of compliance. This is necessary to ensure that requests for extensions of time are not abused and the burden is on the applicant to affirmatively demonstrate compliance with the terms of the board's grant of extension rather than on board staff to track the applicant's compliance.

The deletion of (2)(a)(v) reflects the board's decision to no longer exclude hosted programs that promote a company, individual, or product from eligibility for continuing education credits. The board decided this requirement is archaic and unnecessary and is also difficult to enforce because such promotion is to an extent an inevitable byproduct of an educational presentation about that product, its uses, and benefits.

24.111.2103 MIDWIVES CONTINUING EDUCATION REQUIREMENTS

~~(1) In accordance with 37-27-105(3)(h), MCA, the Montana Board of Alternative Health Care hereby establishes requirements for the continuing education of licensed direct-entry midwives as a condition of license renewal. Training for entry into the field is not considered adequate assurance of continued competence throughout a direct-entry midwife's career. Fulfillment of continuing education requirements is viewed as one necessary vehicle for maintaining standards of professional practice and for assuring the public of a high standard of midwifery services.~~

~~(2) The board/staff will not preapprove continuing education programs or sponsors. Qualifying criteria for continuing education are specified in these rules. It is the responsibility of the licensees to select quality programs that contribute to their knowledge and competence which also meet these qualifications.~~

~~(a) The continuing education program must meet the following criteria:~~

~~(i) The activity must have significant intellectual or practical content. The activity must deal primarily with substantive midwifery issues as contained in the scope of practice of direct-entry midwifery in Montana. In addition, the board may~~

accept continuing education activities from other professional groups or academic disciplines if the licensee demonstrates that the activity is substantially related to his or her role as a midwife. A continuing education program is defined as a class, institute, lecture, conference, workshop, cassette or videotape.

(ii) ~~The activity itself must be conducted by an individual or group qualified by practical or academic experience.~~

(iii) ~~All acceptable continuing education courses must issue a program or certificate of completion containing the following information: full name and qualifications of the presenter; title of the presentation attended; number of hours and date of each presentation attended; name of sponsor; and description of the presentation format.~~

(iv) ~~Preparation for and presentment of a program shall be allowed at the rate of one continuing education credit for each hour of preparation or presentment, limited to one presentation of the program. No more than three credits of continuing education presentations will be allowed.~~

(v) ~~Excluded are programs that solely promote a company, individual or product (hosted programs are not approved), CPR programs (required for licensure) and programs whose subject is practice economics, except those programs specifically dealing with workers' compensation or public health.~~

(b) ~~Implementation for continuing education shall be as follows:~~

(i) ~~One continuing education credit shall be granted for each hour of participation in the continuing education activity excluding breaks and meals. A licensed direct-entry midwife must earn at least 14 continuing education credits within the 12 months prior to the renewal date set by ARM 24.101.413. A maximum of two credits by cassette or videotape per renewal period is allowed. A certificate of completion or an outline of course content must be submitted by the licensee for each cassette or videotape credit to be allowed. The total number of continuing education credit obtained via the Internet and/or correspondence courses will be limited to three credits per renewal period.~~

(ii) ~~No continuing education is required for direct-entry midwives renewing their license for the first time.~~

(iii) ~~All licensed direct-entry midwives must either attest to the board, on the renewal form, that they have obtained the required number of continuing education credits or submit a plan to complete CE credits. The board will review the renewal forms within six months of the renewal date of that same year, and notify the licensee regarding his/her noncompliance. Prior to the next consecutive year's license renewal date, those licensees who have not complied with continuing education requirements will not be granted license renewal. Those not receiving notice from the board regarding their continuing education may assume satisfactory compliance. Notices will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education programs used to complete delinquent continuing education plan requirements for licensure may be used to meet the continuing education requirements for the next continuing education reporting period.~~

(iv) ~~If a licensee is unable to acquire sufficient continuing education credits to meet the requirements, he or she may request a waiver. All requests for waiver will~~

~~be considered by the Board of Alternative Health Care and evaluated on an individual basis.~~

~~(v) It is the responsibility of the licensee to establish and maintain detailed records of continuing education compliance (in the form of programs and certificates of attendance) for a period of two years following submission of a continuing education report.~~

~~(vi) The board will randomly audit 20 percent of the licensees and will request documentation for continuing education credits as specified in board rule. Any continuing education noncompliance may be handled by the board as a disciplinary matter.~~

(1) Midwives must obtain 14 continuing education credits each renewal period except as provided in (9). One hour of education (excluding breaks) equals one continuing education credit.

(2) No more than five continuing education credits per renewal period may be obtained through electronic or other nonlive means of program delivery.

(3) No more than three continuing education credits per renewal period will be approved for preparation of and for a single presentation of a program meeting the requirements of this rule.

(4) Continuing education programs will not be pre-approved by the board or staff.

(5) In order to be approved, a continuing education program must:

(a) have significant intellectual or practical content;

(b) relate to substantive midwifery topics within the scope of practice for direct entry midwives in Montana, except as otherwise provided herein;

(c) be presented by person(s) qualified by practical experience and academic credentials; and

(d) issue certificates of completion (except nonlive programs) and program agendas/syllabi containing the following information:

(i) title and date(s) of program;

(ii) name(s) and qualification of presenter(s);

(iii) outline of program content;

(iv) credit hours of instruction;

(v) description of presentation delivery (i.e., live or nonlive); and

(vi) identification of sponsoring organization.

(6) Continuing education programs from other professions or academic disciplines are eligible for approval if substantially related to the role of midwives.

(7) In accordance with 37-1-131, MCA, compliance with this rule shall be attested to by the midwife on the renewal application except as provided in (8). The board will conduct random audits after each renewal period closes of 20 percent of all midwives with renewed licenses, for documentary verification of compliance. Documentary evidence of program completion must be maintained by the midwife for a period of two years for audit purposes.

(8) Prior to the renewal date set by ARM 24.101.413, a midwife may apply to the board for an extension of time to complete continuing education requirements for the period then concluding. The request must enclose a detailed plan for completion of the requirements. The board may, in its sole discretion and for good cause shown, grant an extension of time of a specific duration. If granted, the midwife

must submit documentary verification of compliance by the extension deadline set by the board.

(9) No continuing education credits are required for a midwife renewing his/her Montana license for the first time.

(10) Continuing education credit will not be approved for programs:

(a) relating to general business or economic issues other than workers' compensation; or

(b) primarily intended to educate the general public such as CPR and first aid other than programs relating to public health issues.

AUTH: 37-1-131, 37-1-141, 37-1-319, 37-27-105, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, MCA

REASON: It is necessary to amend and reorganize this rule for increased clarity among readers and to delete information that is already contained in statute or other rules or is of an administrative nature that need not be in rule. The majority of the amendments to this rule are grammatical, organizational in nature, and do not reflect substantive changes to the former rule.

It is necessary to amend this rule regarding continuing education reporting and licensure renewal to comply with statutory continuing education provisions at 37-1-131, MCA. These amendments clarify that a request for an extension of time to complete the continuing education requirement for good cause will not hold up license renewal, thus conforming to 37-1-131, MCA. However, such request will trigger a postrenewal requirement for submission of documentary verification of compliance. This is necessary to ensure that requests for extensions of time are not abused and the burden is on the applicant to affirmatively demonstrate compliance with the terms of the board's grant of extension rather than on board staff to track the applicant's compliance.

The deletion of (2)(a)(v) reflects the board's decision to no longer exclude hosted programs that promote a company, individual, or product from eligibility for continuing education credits. The board decided this requirement is archaic and unnecessary and is also difficult to enforce because such promotion is to an extent an inevitable byproduct of an educational presentation about that product, its uses, and benefits. The authority cites are being amended to reflect the complete statutory sources of the board's rulemaking authority.

24.111.2301 UNPROFESSIONAL CONDUCT (1) The board defines unprofessional conduct for naturopathy and midwifery as follows:

(1) remains the same but is renumbered (a).

~~(2)~~ (b) Incompetence, negligence, or use of any procedure in the practice of naturopathy or midwifery which creates an unreasonable risk of physical harm or serious financial loss to the patient;

(3) remains the same but is renumbered (c).

(3)(a) through (3)(c) remain the same but are renumbered (c)(i) through (c)(iii).

(4) through (7) remain the same but are renumbered (d) through (g).

~~(8)~~ (h) Offering, undertaking or agreeing to cure or treat disease or affliction by a secret method, procedure, treatment, or the treating, operating, or prescribing for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand from the board;

~~(9)~~ (i) Abandoning, neglecting, or otherwise physically or emotionally abusing a client or patient requiring care;

(10) through (12) remain the same but are renumbered (j) through (l).

~~(13)~~ (m) Failure by a midwife to maintain a current and valid CPR card certifications in adult and infant cardiopulmonary resuscitation and neonatal resuscitation as provided by 37-27-201, MCA.

AUTH: 37-1-131, 37-1-319, 37-26-201, 37-27-105, MCA

IMP: 37-1-141, 37-1-316, 37-1-319, 37-26-201, 37-27-105, MCA

REASON: It is reasonably necessary to amend this rule to clarify that it is considered unprofessional conduct for licensees to fail to maintain current and valid certifications in adult and infant cardiopulmonary resuscitation as well as neonatal resuscitation as required by 37-27-201(5) and (6), MCA. The neonatal resuscitation certification is separate from adult and infant cardiopulmonary resuscitation certification(s). The current rule refers to a single CPR card and may be confusing. Specifying the three required certifications will make the rule clearer. In addition, the rule is being amended to comply with ARM formatting and punctuation requirements and the authority cites are being amended to reflect the complete statutory sources of the board's rulemaking authority.

4. The proposed new rules provide as follows:

NEW RULE I ADDITIONAL RECOMMENDED SCREENING PROCEDURES

(1) Consistent with generally accepted standards of practice and conduct, direct-entry midwives and direct-entry midwife apprentices shall recommend to their clients that the following tests, in addition to those in 37-27-312, MCA, be secured from an appropriate health care provider:

(a) a recommendation that mothers:

- (i) be screened prenatally for Hepatitis C;
- (ii) be screened prenatally for group "B" Beta Strep; and
- (iii) obtain a prenatal PAP smear; and

(b) a recommendation that infants:

- (i) be screened for bilirubin within 72 hours after birth;
- (ii) have expanded newborn metabolic tests within 72 hours after birth; and
- (iii) have a newborn hearing screening within one month after birth.

(2) When the above recommendations are required to be made to clients of Level I, II, or III-A apprentices or to clients of Level III-B apprentices who are not approved by the board for indirect supervision, such recommendations shall be made by the apprentice's supervisor. If the supervisor is a physician or nurse-midwife who is not subject to the board's jurisdiction, the recommendation shall be made by the apprentice.

(3) Level III-B apprentices approved by the board for indirect supervision shall always make the recommendations required by this rule to clients of the Level III-B apprentice.

(4) Documentation of compliance with this rule shall be maintained in the client record.

AUTH: 37-1-131, 37-27-105, MCA

IMP: 37-27-102, 37-27-105, 37-27-312, MCA

REASON: It is reasonable and necessary to adopt this rule to facilitate, through appropriate testing, the early detection of diseases or conditions that could impair the health of the mother, fetus, and/or newborn. Recommending these tests to the client is consistent with recognized standards of care applicable to direct-entry midwives and apprentices. Because the rule requires that licensees recommend the tests but does not purport to require the client to obtain them, adoption of the rule would have no direct financial impact. The board estimates that if a client followed the recommendations, the cost for the tests would be approximately \$350.

NEW RULE II NONROUTINE APPLICATIONS (1) All applications for licensure will be considered nonroutine in nature and will be reviewed and approved by the board prior to issuance of the license.

AUTH: 37-1-131, 37-26-201, 37-27-105, MCA

IMP: 37-26-401, 37-26-402, 37-26-403, 37-26-405, 37-27-201, 37-27-203, 37-27-205, MCA

REASON: Section 37-1-101, MCA, provides that the department is responsible for receipt and processing of routine license applications for all boards administratively attached to the department. It is reasonable and necessary to adopt this new rule to define "nonroutine applications" and clarify that all licensure applications are reviewed by the board. Board review of all applications is necessary because patient care information and information concerning the education and training of applicants require particularized evaluation by board members with special expertise that staff does not possess.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdahc@mt.gov, and must be received no later than 5:00 p.m., January 19, 2007.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.althealth.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed

text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Alternative Health Care administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdahc@mt.gov, or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

9. Lorraine Schneider, attorney, has been designated to preside over and conduct this hearing.

BOARD OF ALTERNATIVE HEALTH CARE
MICHAEL BERGKAMP, ND, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State December 11, 2006